Chandra Sri Ram v Murray Hiebert

HIGH COURT (SHAH ALAM) — ORIGINATING MOTION NO 25–5 OF 1997
LOW HOP BING J
30 MAY 1997

Civil Procedure *— Contempt of court — Order of commital, application for — Locus standi — Applicant was next friend of plaintiff in the civil suit which was the subject matter of the article alleged to have scandalized the court — Whether applicant had sufficient interest in bringing contempt proceedings*

Civil Procedure *— Contempt of court — Scandalizing the court — Article written in respect of sub judice proceedings — Whether article, when read as a whole, scandalized the court and was calculated to excite prejudice against the plaintiff in another suit — Whether the article was designed to exert pressure upon the court to decide the civil suit against the plaintiff — Whether the author had commented adversely upon the merits of the matter and had made a scandalous attack upon the integrity of the court*

Civil Procedure *— Contempt of court — Scandalizing the court — Mens rea — Whether intention was a necessary ingredient of contempt — Whether contempt of court is an offence of strict liability*

By virtue of an ex parte application under O 52 r 2(2) of the Rules of the High Court 1980 ('the RHC'), the applicant (who was the next friend of the plaintiff in the main suit) had obtained leave from the court to commit the respondent, a journalist by profession, to prison for his several contempts of court in publishing an article ('the article') in the Far Eastern Economic Review ('the Review') pending the applicant's case against the International School of Kuala Lumpur (the defendant in the main suit).

The article contained, inter alia, the following: (i) that the plaintiff was the son of a judge of the Court of Appeal and that the trial of his case began in less that seven months (para 3); (ii) that Malaysia has no laws on discrimination (para 4); (iii) that a hefty award for the plaintiff could hinder Malaysia's effort to attract foreign investments (para 5); (iv) that parents normally discuss problems with a teacher, and that if that fails, the parents would go to the headmaster and come to some decision (para 6); and (v) that the plaintiff's father had written a 12-page letter to the court (para 9).

To substantiate the application, the applicant contended, inter alia, that the article when read as a whole, scandalized the court and was calculated to excite prejudice against the plaintiff, who was the son of a judge of the Court of Appeal. The article, according to the applicant, was designed to exert pressure upon the court to decide the civil suit against the plaintiff, inasmuch as the Review was a publication with wide circulation. The applicant further contended that, notwithstanding that the subject matter of the civil suit was sub judice, the respondent had commented adversely upon the merits of

A the matter and had made a scandalous attack upon the integrity of the court.

In his affidavit in reply, the respondent admitted that he was the author of the article. However, he maintained that he had no intention to excite prejudice against the plaintiff or to exert pressure on the
B court. Likewise, he affirmed that it was not his intention in any way to prejudice the fair trial of the action, nor to prejudge its outcome in favour of the defendants.

At the hearing of the substantive notice of motion, counsel for the respondent raised a preliminary objection regarding the validity
C of the notice of motion together with the affidavit on the ground that there were no particulars whatsoever pertaining to the alleged contempt against the respondent which, according to him, deprived the respondent from knowing what contempt case was being mounted against him. Learned counsel also submitted that the committal proceedings should have been begun by the Attorney General and
D not by the applicant. In reply, counsel for the applicant contended that the provisions of O 52 had been complied with when leave was granted for committal proceedings. In addition, he said that the applicant had sufficient interest in bringing this contempt proceedings and hence there was no requirement for the Attorney General to be
E brought into the proceedings.

Held, dismissing the preliminary objection and finding the respondent guilty of contempt:

(1) The allegation of facts in relation to the alleged contempt were contained in the grounds which were adequately stated in strict
F compliance with O 52 r 2(2) of the RHC and the respondent knew exactly what the alleged contempt was to enable him to meet the allegations against him. These were the grounds set out in the substantive notice of motion which was commenced by the applicant pursuant to the article admittedly authored by the
G respondent (see p 253C, F); *Nicholls v Nicholls* (1997) 147 NLJ 61 followed; *PP v Raymond Chia Kim Chwee & Anor* [1985] 2 MLJ 63, *PP v Teoh Choon Teck* [1963] MLJ 34, *PP v Oh Keng Seng* [1980] 2 MLJ 244 and *Syarikat M Mohd v Hahindapal Singh & Ors* [1991] 2 MLJ 112 distinguished.

It was abundantly clear that the applicant — who was the next
H friend of the plaintiff in the civil suit which was the subject matter of the article written by the respondent — had sufficient interest in this matter and hence there could be no doubt that the applicant had the necessary locus standi to initiate the contempt proceedings (see p 254G); *Arthur Lee Meng Kwang v Faber*
I *Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 followed.

(2) The respondent had surreptitiously portrayed in para 3 of his article a picture that the whole proceedings in the civil suit had been short-circuited in order to accommodate the applicant's

husband who was a judge of the Court of Appeal, when actually that was not the case here. Paragraph 3 was both scandalous and contemptuous in that it sought to attack the fundamental integrity of the court (see pp 259I and 260A); *Re A-G of Canada and Alexander et al* 65 DLR (3d) 608 followed.

(3) The respondent had written the article in blatant disregard for the truth. The passage written by the respondent in para 4 — in which he had quoted an unidentified source — to the effect that Malaysia has no laws on discrimination, was an unwarranted lie which went beyond an honest expression of opinion. Paragraph 4 implied that the court simply and capriciously proceeded with the hearing of the civil suit despite the absence of the law on discrimination, therefore failing to exercise a fair and independent judgment. It gave the impression that this court was seen to be unable to dispense justice with fairness and impartiality (see pp 261E, 263I and 264A).

(4) Paragraph 5 of the article contained threat and intimidation to the court in that if the court were to hand down a hefty award, foreign investors would be driven away. This was clearly calculated to divert the course of justice and therefore interfered with the due process of law and the course of justice (see p 264F).

(5) In para 6, the respondent had given an ordinary, reasonable reader the impression that the plaintiff's parents have not availed themselves of the opportunity to engage in discussion or meeting with the school, but instead chose to proceed to litigate in court as the first priority — with the sole purpose of obtaining astronomical damages from the court, thereby giving the impression of the unmitigated greed on the part of the plaintiff and his parents. By tarnishing the good reputation of the plaintiff and his parents, the respondent threw a totally bad light in the mind of the court having conduct of the trial in which the plaintiff was a party. This was certainly an unwarranted criticism of a party having a matter pending before the court and was clearly sub judice (see p 265F–I).

(6) The respondent had stated that the applicant's husband, a judge of the Court of Appeal, had written a 12-page letter to the court, when indeed there was no such letter written. There was no doubt that this paragraph was calculated to give a clear impression to an ordinary, reasonable reader that the plaintiff's father had communicated with the court for the purpose of bringing about an influence upon the court, thereby constituting an interference by the plaintiff's father in the administration of justice. The paragraph written by the respondent was clearly contumacious and constituted contempt of court (see p 266C–D).

(7) In order to establish contempt of court as a result of publication scandalizing the court or interfering with the course of justice, as in the instant case, intention or mens rea on the part of the

alleged contemnor was not an essential ingredient. The test was whether the matter complained of had the tendency or was calculated to interfere with the due administration of justice, not whether the perpetrator had intended that result. Contempt of court was an offence of strict liability in which intention on the part of the contemnor was irrelevant (see p 272D–E, I); *St James's Evening Post* (*Read & Huggonson*'s case) (1742) 2 Atk 469, *Ex p Jones* (1806) 13 Ves 237, *R v Griffiths ex p A-G* [1957] 2 QB 192, *A-G v Times Newspaper* [1974] AC 273 and *Re Odhams Press Ltd, ex p A-G* [1957] 1 QB 73 followed.

[**Bahasa Malaysia Summary**

Melalui satu permohonan ex parte di bawah A 52 k 2(2) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), pemohon (yang merupakan sahabat wakil kepada plaintif dalam guaman utama) telah memperolehi kebenaran mahkamah untuk memenjarakan seorang wartawan atas sebab beberapa penghinaan mahkamah dalam menyiarkan artikel ('artikel tersebut') di dalam majalah Far Eastern Economic Review ('majalah tersebut') sementara menunggu kes pemohon terhadap International School of Kuala Lumpur (defendan dalam guaman utama).

Artikel tersebut mengandungi, antara lain, yang berikut: (i) bahawa plaintif adalah anak kepada seorang hakim Mahkamah Rayuan dan bahawa perbicaraan kesnya dimulakan dalam masa kurang daripada tujuh bulan (perenggan 3); (ii) bahawa Malaysia tidak mempunyai undang-undang mengenai diskriminasi (perenggan 4); (iii) bahawa award yang besar kepada plaintif boleh menghalang usaha Malaysia untuk menarik pelaburan asing (perenggan 5); (iv) bahawa ibu bapa biasanya membincangkan masalah dengan guru, dan bahawa jika itu gagal, ibu bapa akan pergi berjumpa guru besar dan mencapai satu keputusan (perenggan 6); dan (v) bahawa bapa plaintiff telah menulis surat sepanjang 12 mukasurat kepada mahkamah (perenggan 9).

Untuk menyokong permohonan tersebut, pemohon telah berhujah, antara lain, bahawa rencana tersebut jika dibaca secara keseluruhannya, merendahkan martabat mahkamah dan dibuat untuk menimbulkan kemudaratan terhadap plaintif, yang merupakan anak kepada seorang hakim Mahkamah Rayuan. Mengikut pemohon, artikel tersebut dikarang dengan niat untuk menggesa mahkamah memutuskan guaman sivil itu menentang plaintif, memandangkan majalah tersebut adalah satu penerbitan yang mempunyai pasaran yang luas. Pemohon selanjutnya berhujah bahawa, walaupun perkara subjek guaman sivil itu adalah sub judice, penentang telah membuat komen negatif terhadap merit perkara itu dan telah membuat serangan yang memeranjatkan ke atas integriti mahkamah.

Dalam afidavit jawapannya, penentang mengaku bahawa beliau adalah pengarang artikel tersebut. Bagaimana pun, beliau menegaskan

bahawa beliau tidak mempunyai niat untuk menimbulkan kemudaratan terhadap plaintif atau untuk menggesa mahkamah. Begitu juga, beliau mengesahkan bahawa bukanlah niatnya dalam apa cara pun untuk menjejaskan perbicaraan yang adil bagi tindakan itu, atau untuk merumus keputusan kes tersebut memihak kepada defendan-defendan.

Sewaktu pendengaran notis usul substantif, peguam penentang telah menimbulkan satu bantahan permulaan mengenai kesahihan notis usul bersama dengan afidavit atas alasan tidak ada butir-butir mengenai dakwaan menghina mahkamah terhadap penentang yang mana, mengikut beliau, telah menyebabkan penentang tidak mengetahui alasan sebenar prosiding penghinaan dimulakan. Peguam yang bijaksana juga menghujahkan bahawa prosiding komital sepatutnya dimulakan oleh Peguam Negara dan bukannya oleh pemohon. Sebagai jawapannya, peguam pemohon menyatakan peruntukan-peruntukan di bawah A 52 telah dipatuhi apabila kebenaran untuk prosiding penghinaan diperolehi. Tambahan lagi, beliau menyatakan bahawa pemohon mempunyai kepentingan yang mencukupi dalam membawa prosiding penghinaan ini dan oleh itu tiada keperluan untuk Peguam Negara di bawa ke prosiding itu.

Diputuskan, menolak bantahan permulaan dan mendapati penentang bersalah menghina mahkamah:

(1) Pengataan fakta-fakta mengenai tohmahan menghina mahkamah terkandung di dalam alasan-alasan yang dinyatakan dengan mencukupi mematuhi dengan ketat A 52 k 2(2) KMT dan penentang betul-betul tahu apa dia pengataan penghinaan itu untuk membolehkan beliau menghadapi pengataan terhadapnya. Ini adalah alasan-alasan yang dinyatakan dalam notis usul substantif yang dimulakan oleh pemohon ekoran daripada artikel yang diakui dikarang oleh penentang (lihat ms 253C, F); *Nicholls v Nicholls* (1997) 147 NLJ 61 diikut; *PP v Raymond Chia Kim Chwee & Anor* [1985] 2 MLJ 63, *PP v Teoh Choon Teck* [1963] MLJ 34, *PP v Oh Keng Seng* [1980] 2 MLJ 244 dan *Syarikat M Mohd v Hahindapal Singh & Ors* [1991] 2 MLJ 112 dibeza.

Adalah jelas bahawa pemohon — yang merupakan sahabat wakil plaintif dalam guaman sivil yang menjadi perkara subjek artikel yang ditulis oleh penentang — mempunyai kepentingan yang mencukupi dalam perkara ini dan oleh itu tidak ada keraguan bahawa pemohon mempunyai locus standi yang perlu untuk memulakan prosiding penghinaan mahkamah (lihat ms 254G); *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 diikut.

(2) Penentang telah secara sembunyi menggambarkan dalam perenggan 3 artikelnya suatu keadaan bahawa keseluruhan prosiding dalam guaman sivil itu dipendekkan demi untuk membantu suami pemohon yang merupakan hakim Mahkamah

Rayuan, walhal itu bukanlah hakikatnya. Perenggan 3 adalah melampau dan penuh kebencian yang mana ianya cuba untuk menyerang integriti penting mahkamah (lihat ms 259I dan 260A); *Re A-G of Canada and Alexander et al* 65 DLR (3d) 608 diikut.

(3) Penentang telah menulis artikel itu dengan tidak langsung menghiraukan tentang kebenaran apa yang ditulis. Rangkap yang ditulis oleh penentang dalam perenggan 4 — di mana beliau telah memetik satu sumber yang tidak diketahui — kononnya Malaysia tidak mempunyai undang-undang diskriminasi adalah satu pembohongan yang tidak langsung menunjukkan satu pendapat yang jujur. Perenggan 4 membayangkan bahawa mahkamah semata-mata dan dengan tidak menentu meneruskan perbicaraan guaman sivil itu walaupun tanpa undang-undang berkenaan dengan diskriminasi, dengan itu gagal untuk melaksanakan penghakiman yang adil dan bebas. Ini memberikan tanggapan bahawa mahkamah dilihat sebagai tidak berupaya untuk melaksanakan keadilan dengan adil dan saksama (lihat ms 261E, 263I dan 264A).

(4) Perenggan 5 artikel tersebut mengandungi ancaman dan ugutan kepada mahkamah di mana jika mahkamah memberikan award yang besar, pelabur asing akan menghindar diri. Ini dengan jelas dibuat dengan tujuan untuk mengalihkan perjalanan keadilan dan dengan itu mengganggu proses undang-undang dan perjalanan keadilan (lihat ms 264F).

(5) Dalam perenggan 6, penentang telah memberi tanggapan kepada seorang pembaca biasa yang munasabah bahawa ibu bapa plaintif tidak mengambil peluang untuk berbincang dengan pihak sekolah, tetapi sebaliknya telah memilih untuk menyaman di mahkamah sebagai prioriti pertama — dengan tujuan utama untuk mendapat ganti rugi yang banyak daripada mahkamah, dengan itu memberikan tanggapan bahawa plaintif dan ibu bapanya adalah tamak. Dengan mencemarkan reputasi plaintif dan ibu bapanya, penentang telah memberikan gambaran yang buruk kepada pemikiran mahkamah yang menjalankan perbicaraan di mana plaintif merupakan satu pihak. Jelas ini merupakan satu kritikan yang tidak berasas terhadap satu pihak yang mempunyai perkara yang menunggu penyelesaian di hadapan mahkamah dan jelas sub judice (lihat ms 265F–I).

(6) Penentang telah mengatakan bahawa suami pemohon, seorang hakim Mahkamah Rayuan, telah menulis sepucuk surat sepanjang 12 mukasurat kepada mahkamah sedangkan pada hakikatnya tiada surat sebegini ditulis. Tiada keraguan bahawa perenggan ini dibuat untuk memberikan tanggapan yang jelas kepada pembaca biasa yang munasabah bahawa bapa plaintif telah berkomunikasi dengan mahkamah dengan tujuan untuk mempengaruhi mahkamah, dan dengan itu merupakan campur tangan bapa plaintif dalam pentadbiran keadilan. Perenggan yang

ditulis oleh penentang adalah jelas merupakan suatu penghinaan mahkamah (lihat ms 266C–D).

(7) Untuk membuktikan penghinaan mahkamah akibat daripada penerbitan yang menghina mahkamah atau mengganggu perjalanan keadilan, seperti dalam kes ini, niat atau mens rea di pihak penghina bukanlah satu kemestian. Garis panduannya ialah sama ada perkara yang dibuat aduan mempunyai kecenderungan atau dibuat untuk mencampuri dalam pentadbiran keadilan, bukan sama ada penghina mempunyai niat untuk mencapai keputusan itu. Penghinaan mahkamah adalah satu kesalahan liabiliti ketat dan niat penghina tidak relevan (lihat ms 272D–E, I); *St James's Evening Post* (*Read & Huggonson*'s case) (1742) 2 Atk 469, *Ex p Jones* (1806) 13 Ves 237, *R v Griffiths ex p A-G* [1957] 2 QB 192, *A-G v Times Newspaper* [1974] AC 273 dan *Re Odhams Press Ltd, ex p A-G* [1957] 1 QB 73 diikut.]

Notes

For cases on contempt of court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 788–837.

Cases referred to

A-G's Application, Re, A-G v Butterworth [1963] 1 QB 696 (folld)
A-G for Manitoba and Radio OB Ltd, Re (1976) 70 DLR (3d) 311 (refd)
A-G (NSW) v John Fairfax & Sons Ltd (1980) NSWLR 362 (folld)
A-G, Malaysia v Manjeet Singh Dhillon [1991] 1 MLJ 167 (folld)
A-G v Hislop & Anor [1991] 1 All ER 911 (refd)
A-G v Newspaper Publishing plc & Ors [1988] Ch 333 (folld)
A-G v Times Newspaper [1974] AC 273 (folld)
A-G v Tonks (1939) NZLR 533 (refd)
A-G of Canada and Alexander et al, Re 65 DLR (3d) 608 (folld)
Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors [1986] 2 MLJ 193 (folld)
Bramblevale Ltd, Re [1970] Ch 128 (refd)
Brig ET Sen (Retd) v Edatata Narayanan & Ors 1969 AIR Delhi 201 (folld)
Chung Onn v Wee Tian Peng [1996] 5 MLJ 521 (refd)
Datuk Hj Harun bin Hj Idris v PP [1977] 2 MLJ 155 (folld)
Dean v Dean [1978] 1 FLR 517 (folld)
EM Sankaran Namboodiripad v T Narayanan Nambiar 1970 AIR 2015 (refd)
Ex p Jones (1806) 13 Ves 237 (folld)
Government of Malaysia v VR Menon [1990] 1 MLJ 278 (folld)
Hinch v A-G for the State of Victoria (1987) 164 CLR 15 (refd)
Johd Fairfax & Sons Pty Ltd v McRae (1955) 93 CLR 351 (refd)
Lane v Registrar of the Supreme Court of NSW (Equity Division) (1981) 148 CLR 245 (refd)

Littler v Thomson (1839) 2 Beav 129 (folld)
Malaysian Bar & Anor v Government of Malaysia [1987] 2 MLJ 165 (folld)
MBf Holdings Bhd v Emtex Corporation Bhd (1986) 1 MLJ 477 [Refd]
Miller v Knox (1834) 4 Bing NC 574 (refd)
Nicholls v Nicholls (1997) 147 NLJ 61 (folld)
Odhams Press Ltd, Re, ex p A-G [1957] 1 QB 73 (folld)
Oh Keng Seng v PP [1980] 2 MLJ 244 (distd)
Polygram Records Sdn Bhd v Phua Tai Eng [1986] 2 MLJ 87 (folld)
PP v Abdul Samad & Anor [1953] MLJ 118 (folld)
PP v Khong Teng Khen & Anor [1976] 2 MLJ 166 (folld)
PP v Raymond Chia Kim Chwee & Anor [1985] 2 MLJ 63 (distd)
PP v Teoh Choon Teck [1963] MLJ 34 (distd)
R v Davies, ex p Delbert Evans [1945] 1 KB 435 (refd)
R v Evening Standard Co Ltd [1954] 1 QBD 578 (refd)
R v Griffiths, ex p A-G [1957] 2 QB 192 (folld)
Sambhu Nath Jha v Kedar Prasad Sinha 1972 AIR 1515 (folld)
Sin Poh Amalgamated Ltd & Ors, Re [1954] MLJ 152 (folld)
Sir Robert Thomas & Ors, Re [1930] 2 Ch 368 (folld)
Solicitor General v Radrod Avon Ltd [1978] 1 NZLR 225 (refd)
St James's Evening Post (*Read & Huggonson*'s case) (1742) 2 Atk 469 (folld)
Syarikat M Mohd v Hahindapal Singh & Ors [1991] 2 MLJ 112 (distd)
Tay Seng Keng v Tay Ek Seng Co Sdn Bhd [1978] 1 MLJ 126 (folld)
Victoria v Australian Building Construction Employees' & Builders' Labourers' Federation (1982) 152 CLR 25 (refd)
Wee Choo Keong v MBf Holdings Bhd & Anor [1995] 3 MLJ 549 (folld)

Legislation referred to

Civil Law Act 1956 s 3
Courts of Judicature 1964 s 13
Criminal Procedure Code (FMS Cap 6)
Federal Constitution arts 8(1), 10(2)(a), 121, 126
Penal Code (FMS Cap 45)
Rules of the High Court 1980 O 18 r 19(1)(a), O 25, O 52 rr 1, 2, 3

Kam Woon Wah (*Manjit Singh, Edward Kam* and *S Malar* with him) (*Kam Woon Wah & Co*) for the applicant.

Mohd Shafee (*Oh Choong Ghee* and *Cheong Wee Wong* with him) (*Shafee & Co*) for the respondent.

Cur Adv Vult

Low Hop Bing J:

LEAVE GRANTED ON 1 FEBRUARY 1997

Pursuant to the ex parte application ('the ex parte application') filed by the applicant herein, I have on 1 February 1997 granted leave to the applicant to apply for an order that the respondent be committed to prison for his several contempts of this court in publishing in the issue of the 'Far Eastern Economic Review' ('the Review') dated 23 January 1997 — an article under the heading 'See You in Court' ('the article') — upon the grounds set forth in the statement filed under O 52 r 2(2) of the Rules of the High Court 1980 ('the RHC') and that the costs of and occasioned by this application be costs in the cause.

GROUNDS OF THE EX PARTE APPLICATION

The grounds in support of the ex parte application are contained in the statement made pursuant to O 52 r 2(2) of the RHC. The statement may be summarized as follows:

(1) The applicant is a housewife and resides at No 6 Lorong U Thant, 55000 Kuala Lumpur. She is a mother and next friend of the plaintiff in the High Court, Shah Alam Civil Suit No 22–210–96 ('the civil suit').

(2) The respondent is a journalist by profession. He is at present the Kuala Lumpur representative of the Review. His address is 27, Jalan 15, Taman Tun Abdul Razak, Ampang, 68000 Selangor.

(3) The applicant prays that the respondent be committed to prison for his several contempts of this court in authoring and publishing the article in the issue of the Review dated 23 January 1997 on the grounds that the article, when read as a whole:

   (a) scandalized this court;

   (b) was calculated to excite prejudice against the plaintiff and the civil suit presently being tried before this court;

   (c) was designed to exert pressure upon this court to decide the civil suit against the plaintiff.

In her affidavit dated 28 January 1997, in support of her application for leave, the applicant affirmed, inter alia, that the Review is a publication that has wide circulation throughout East Asian countries and is available for sale almost in all countries.

The applicant stated that one Dr Barry Farnham is the headmaster of International School of Kuala Lumpur ('the ISKL'). The assistant to the headmaster is one Linda Hiebert, who is the wife of the respondent. By reason aforesaid, the applicant said that the respondent could not and had not exercised an independent mind and/or view and had therefore written the article slanting in favour of his wife's employer — the ISKL.

A On 6 and 7 January 1997, the first two days of the hearing of the civil suit, no member of the press was present. However, on the third day of the trial, ie 8 January 1997, the respondent and other members of the press were present.

On 8 January 1997, the applicant saw the respondent seated in the B public gallery of the courtroom in which the trial of the civil suit was taking place. The applicant saw Ms Gail Vendeland, the chairman of the Board of Governor of the ISKL, approach the respondent and speak to him. The respondent and Ms Gail Vendeland then left the courtroom and the applicant saw them deep in conversation at the coffee house on the ground C floor of the building in which this court is situated.

In the issue of the Review of 23 January 1997, the respondent had authored the article which, inter alia, discussed the merits of the civil suit. According to the applicant, the respondent had scandalized this court in the article.

D The applicant stated that the contents of the article, when read as a whole, amounted to serious contempt of this court and an unwarranted attack upon the Malaysian judiciary.

Based on the above facts, the applicant stated as follows:

E (1) the respondent should never have written the article because his wife is a senior employee of the ISKL and there was an obvious conflict of interest. Alternatively, if the respondent chose to write the article despite the conflict of interest, he should have declared his interest;

(2) notwithstanding that the subject matter of the civil suit was sub F judice, the respondent had commented adversely upon the merits of the civil suit and had made a scandalous attack upon the integrity of this court;

(3) the dominant purpose behind the respondent's scandalous attack upon the integrity of this court was to assist the ISKL by stating facts G which he knew or had reason to believe were false. The respondent had also placed a slant on the facts in order to portray a false and misleading picture;

(4) the respondent had, in the article complained of, also attacked the H applicant, ie the mother and next friend of the plaintiff in the civil suit, for the purpose of exciting prejudice against the applicant/ plaintiff and the litigation in which she was involved during the pendency of the civil suit;

(5) the article was designed to exert pressure upon this court to decide I the civil suit against the applicant/plaintiff.

In the premises, the applicant stated that the respondent was guilty of several contempts of this court and should be punished accordingly.

SUBSTANTIVE NOTICE OF MOTION

Pursuant to the leave granted by myself on 1 February 1997, the applicant filed a substantive motion praying for an order, inter alia, that the respondent be committed to prison for his several contempts of this court in publishing the article in the issue of the Review dated 23 January 1997 and that the costs of and occasioned by this application be paid by the respondent.

PRELIMINARY OBJECTION BY RESPONDENT

When this substantive notice of motion was heard on 28 March 1997, the respondent did not seek to set aside the leave granted to the applicant on 1 February 1997. The respondent had in fact on 24 March 1997 affirmed and filed an affidavit in reply. However, at the hearing of the substantive notice of motion, learned counsel for the respondent submitted that the substantive notice of motion together with the affidavit in support was totally devoid of any charges and that there were no particulars whatsoever, pertaining to the alleged contempt against the respondent. According to him, without these particulars, the respondent would not know what contempt case was being mounted against him. He said that the respondent was placed in an embarrassing position in that the respondent would not be able to defend himself. Although learned counsel for the respondent admitted that scandalizing the court was one of the three limbs which had been placed in the substantive notice of motion and the affidavit in support, he submitted that nothing was said about the particulars falling under the category of scandalizing the court. Learned counsel for the respondent said that committal proceedings for contempt of court was analogous to a criminal trial as the repercussions were criminal since the relief sought was imprisonment. All the trappings of a criminal trial must be satisfied, in that there must be a charge on the alleged phrase used and exact passages cited from the article as particulars of that charge, without which the respondent was not fully prepared to argue. At the moment, the respondent was guessing what wrong he had done.

It was further contended for the respondent that both the substantive notice of motion and the affidavit in support were defective as the applicant had only stated 'the article when read as a whole' without fully setting out the charge or the particulars of the contempt supporting it. Learned counsel proceeded to ask for the specific sentences in the article to be cited which merit these contempt proceedings and what was it that was said in the article which had attacked the integrity of this court. Failure to mention the particulars in the substantive notice of motion, in his view, was fatal and hence the substantive notice of motion should be struck out on grounds of nullity and an abuse of the process of the court.

In addition, learned counsel for the respondent contended that these committal proceedings should have been commenced by the Attorney General and not by the applicant, because the Attorney General had the necessary machinery to carry through the notice of motion.

A RESPONSE BY THE APPLICANT

It was contended for the applicant that this application was made under O 52 of the RHC and not under the Penal Code (FMS Cap 45) ('the PC') or the Criminal Procedure Code (FMS Cap 6) ('the CPC'). Hence, only the provisions under the RHC would apply with full vigour, B to the exclusion of the PC or the CPC. In the instant case, the provisions of O 52 had been complied with by the applicant when leave was granted for committal proceedings and this was followed by the substantive notice of motion for committal. He said that the particulars and the grounds for committal proceedings had been specifically mentioned in the statement as required by O 52 r 2(2) and so all the procedural requirements prescribed C by O 52 had been fulfilled by the applicant, both in the ex parte application and the substantive notice of motion.

In addition, learned counsel for the applicant informed the court that the applicant had sufficient interest in bringing these contempt proceedings and hence there was no legal requirement for the Attorney General to be D brought into the proceedings. In any event, all the cause papers in these proceedings had been duly served on the Attorney General.

RULING OF THE COURT ON THE PRELIMINARY OBJECTION

E *Jurisdiction of our superior court in relation to contempt of court*

The Federal Court, the Court of Appeal, the High Court of Malaya and the High Court of Sabah and Sarawak respectively have been conferred absolute and plenary powers to punish any person who is guilty of contempt. Such power is enshrined in art 126 of the Federal Constitution and s 13 of F the Courts of Judicature Act 1964 which are in pari materia, in the following words:

> The Federal Court, the Court of Appeal and the High Court shall have power to punish any contempt of itself.

G *Procedure*

In the High Courts of Malaysia (namely, the High Court of Malaya and the High Court of Sabah and Sarawak — see art 121 of Federal Constitution), the procedure governing committal proceedings in respect of contempt of court is governed by O 52 of the RHC. Under O 52 r 1(2), H the power of the High Court to punish for contempt of court may be exercised by an order of committal in Form 110. For example, where contempt of court is committed in connection with any proceedings before the High Court, then, subject to O 52 r 1(4), an order of committal may be made by the High Court (see O 52 r 1(2)(a)). Order 52 r 1(4) provides that where by virtue of any written law, the High Court has power to I punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would — if it had been done in relation to the High Court — have been a contempt of

the court, an order of committal may be made by a judge of the High Court. Where contempt of court was committed in connection with any proceedings in the High Court, an order of committal may be made by a judge of the High Court (see O 52 r 1(3)). A

In order to initiate committal proceedings, an applicant must take the first step to apply for leave, because O 52 r 2(1) of the RHC states that no application to a court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule. An application for such leave must be made ex parte to the court, except in vacation when it may be made to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal was sought, and by an affidavit, to be filed before the application was made, verifying the facts relied thereon (see O 52 r 2(2)). The applicant had complied with the provisions of O 52 r 2(2) and hence leave was granted to her on 1 February 1997. B C D

Upon being granted leave under O 52 r 2, the applicant filed the substantive notice of motion on 4 February 1997, ie within the prescribed period of 14 days under O 52 r 3(2) and such substantive notice of motion was personally served on the respondent on 5 February 1997 — as required under O 52 r 3(3) — informing the respondent of the hearing date of the substantive notice of motion, ie 28 March 1997 — which was well beyond the minimum eight clear days prescribed under O 52 r 3(1) — which states that there must be at least eight clear days between the service of the notice of motion and the day named therein for the hearing. E

It seems clear to me that under O 52 r 2(2), at the ex parte application for leave — apart from other procedural requirements stated therein — the most pertinent issue was that the application must be supported by a statement setting out, inter alia, the grounds on which the committal was sought and this, to my mind, had been clearly and concisely set out in the statement filed herein by the applicant pursuant to O 52 r 2(2). F G

In my view, O 52 of the RHC provides for the safeguards in the interest of the alleged contemnor (see *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 at p 195, per Mohamed Azmi SCJ). The Supreme Court in this case held, inter alia, that the jurisdiction of the Supreme Court (including the Court of Appeal and the High Court) to deal with contempt is conferred by art 126 of the Federal Constitution and s 13 of the Courts of Judicature Act 1964 (see also *Chung Onn v Wee Tian Peng* [1996] 5 MLJ 521 at p 525) and the procedure for contempt proceedings in the Supreme Court (including the Court of Appeal and the High Court) is governed by O 52 of the RHC. I am therefore unable to uphold the contention of learned counsel for the respondent to the effect that the CPC and/or the PC apply to the contempt proceedings herein. Hence, I hold that the authorities (namely, *PP v Raymond Chia Kim Chwee & Anor* [1985] 2 MLJ 63, *PP v Teoh Choon Teck* H I

A [1963] MLJ 34 and *Oh Keng Seng v PP* [1980] 2 MLJ 244) cited by learned counsel for the respondent in relation to the framing of criminal charges to be used in criminal trials, have no application whatsoever to contempt proceedings under O 52.

In *Syarikat M Mohd v Hahindapal Singh & Ors* [1991] 2 MLJ 112,
B the plaintiff's statement in the notice of motion did not contain sufficient information as to what the alleged breach was, as a result of which, Vohrah J declined to make an order on the committal proceedings.

In the case before me, the grounds as alluded to above had been specifically set out with sufficient particularity under O 52 r 2(2) to enable
C the respondent, who was the person alleged to be in contempt, to meet them. These were the grounds set out in the substantive notice of motion which was commenced by the applicant pursuant to the article 'See You in Court' admittedly authored by the respondent.

In *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors*, a similar point was raised to the effect that the charge in the statement was
D defective in that it lacked particulars. As a matter of fact, there the alleged contempt which was set out in the statement under O 52 r 2(2) of the RHC was in the form of four letters written by Arthur Lee Meng Kwang to the appellate judges either directly or copied to them and others. Having regard to the contents of the letters which were referred to in the statement
E and exhibited in the verifying affidavit, the Supreme Court found that it was sufficient for the advocate, namely Arthur Lee Meng Kwang to know what the alleged contempt was against him, and to enable him to meet the charge and prepare the defence.

Similarly, in the case before me, I also find that the allegations of
F facts in relation to the alleged contempt were contained in the grounds which were adequately stated in strict compliance with O 52 r 2(2) and the respondent knew exactly what the alleged contempt was to enable him to meet the allegations against him.

Even assuming for a moment that there was a procedural irregularity,
— which I think there was none — such procedural irregularity did not
G affect the validity of the ex parte application or the substantive notice of motion. In *Nicholls v Nicholls* (1997) 147 NLJ 61, the English Court of Appeal had the occasion to consider, inter alia, the effect of procedural irregularities on the validity of committal orders. The court there took the opportunity to review fully the previous authorities on this subject in the
H hope that it would be possible to provide greater clarity than existed at present as to the state of the law. The first ground stated in the appeal to the Court of Appeal was: 'That the committal order dated 15 March 1996 in Form N79 failed to give proper details of the contempt found proved.'. Lord Woolf MR, in giving the judgment of the court, cited extensively from previous authorities and after carefully reviewing them, was disinclined
I to set aside committal orders on technical grounds. His Lordship held, inter alia:

> The court itself has a very substantial interest in seeing that its orders are upheld. If committal orders are to be set aside on purely technical grounds

which have nothing to do with the justice of the case, then this has the effect of undermining the system of justice and the credibility of the court orders. While the procedural requirements in relation to applications to commit and committal orders are there to be obeyed and to protect the contemnor, if there is non-compliance with the requirements which does not prejudice the contemnor, to set aside the order purely on the grounds of technicality is contrary to the interest of justice. As long as the order made by the judge was a valid order, the approach of this court will be to uphold the order in the absence of any prejudice or injustice to the contemnor as a consequence of doing so.

Locus standi to initiate contempt proceedings

On the contention of the respondent that the matter of contempt of court in the instant case should have been started by the Attorney General as the custodian of public interest and not by the applicant, I am of the view that the short answer to this contention has been given by the Supreme Court in *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 where Mohamed Azmi SCJ held, inter alia, as follows:

> When the contempt is not committed in the face of the court, as is the case alleged here, it is equally important that the dignity and integrity of the court be protected and preserved, and in such cases the contempt proceedings may be initiated by motion either by the Attorney General or any private party who has sufficient interest in the matter, or even by the court itself, although in practice it seems unjust to expect the court to protect itself by being both complainant and judge, save in the unlikely event of the Attorney General or the appropriate private party declining to act. In this case, the complainants are the successful parties in the two civil appeals, from which the present contempt proceeding arose. Surely, the complainants and their advocates and solicitors have sufficient interest in this matter to give them locus standi (see also *MBf Holdings Bhd v Emtex Corp Bhd* [1986] 1 MLJ 477 and *Tan Sri Hj Othman Saat v Mohd bin Ismail* [1982] 2 MLJ 177).

It seems obvious to me that the applicant who was the next friend of the plaintiff in the civil suit — which was the subject matter of the article written by the respondent — had sufficient interest in this matter and hence there could be absolutely no doubt that the applicant had the necessary locus standi to initiate the present contempt proceedings. In the circumstances, I hold that contempt proceedings, such as the present case, may be brought, inter alia, by the applicant herein.

Hence, in the light of the above grounds, I overrule the preliminary objection of the respondent.

MERITS OF THE CONTEMPT PROCEEDINGS

Facts and grounds

The facts and the grounds upon which these contempt proceedings has been founded have been stated as comprehensively as possible, above, and therefore would require no repetition here.

Applicant's case

The main thrust of the complaint, as analysed by learned counsel for the applicant, was that the article authored by the respondent consisted of blatant lies, misrepresentations and threats which had the tendency of undermining or lowering the authority of the court, obstructing and interfering with the due course of justice, and was tainted with improper pressure. In support of this submission, he referred particularly and specifically to paras 3, 4, 5, 6, 12, 13, and 14 and submitted that reading these paragraphs as a whole, the applicant had proved beyond reasonable doubt, a case of contempt of court against the respondent.

Respondent's case

In the respondent's affidavit in reply, he affirmed that the facts deposed to therein were gathered from the records of the Review. The respondent, as the Kuala Lumpur correspondent of the Review, covered a series of stories of interest to the Review's international readership, especially in Malaysia and Singapore. He had worked for the Review for more than ten years. He admitted that he was the author of the article. He filed the copy for this story to the Hong Kong head office on 12 January 1997. The article went through normal editing by the editors of the Review in Hong Kong before it was published.

His duties as a correspondent included keeping in touch with interesting stories about developments in Malaysian politics, society, law, business and education. In consequence, he had numerous contacts in these areas. It was from an educational contact in September 1996 that he first heard about the action by Govind Sri Ram against the ISKL. According to the respondent, his wife who holds an administrative position at the ISKL, had not made any mention to him of the case before then. The respondent said that his wife had begun work at the school in July 1996, well after the events which were the subject of legal action and of which she had no knowledge. He added that her job was concerned with strategic planning for the future and not with teaching, and that she had no involvement in or indeed knowledge of the ISKL's defence in this action.

To the knowledge of the respondent, over the next few months, the case was widely discussed amongst lawyers and educationalists, being a topic of conversation at many functions where he was present. He stated that lawyers were surprised at the novelty of the claim and at the fact that it had been brought by the wife of a judge of the Court of Appeal. He added that educationalists were concerned at the intrusion of law into an area which has hitherto been regarded as appropriate for private settlement between teachers and parents. The respondent deposed that they were further concerned (especially governors of private schools) at the prospect that educational institutions might be penalized in damages so heavy as to force them to close down.

The respondent's view, which he hastened to add, would be shared by any competent reporter since these issues made the case a matter of great public and indeed regional interest. He deemed it his professional

duty to report it, in a manner appropriate to a weekly news magazine. He opined that it would not have been appropriate to report only the evidence heard in a particular week, as that would have been one-sided. The respondent thought the best way to cover the case was to write a feature article, which would set out the contentions of both sides and describe the issues and concerns the case had aroused.

The respondent said that the trial commenced on 6 January 1997 and that it was very widely reported a couple of days later. He attended court on 8 January and heard the plaintiff testify and undergo cross-examination. He read the court documents so that he could appreciate the claims of both parties.

He wrote the article on 11 January 1997. He added that it was not his intention in any way to prejudice the fair trial of the action, nor to prejudge its outcome in favour of the defendants. He said that his sole purpose was to present a newsworthy story in a manner which would fairly summarize the arguments of both parties and illuminate the issues and concerns to which the case had given rise.

The respondent did not believed that I, as the trial judge, would have my mind affected in any way by the contents of the article. The respondent could not accept that the contents of the article would in any way affect the litigants or their lawyers, given the very wide publicity the case had attracted already, prior to its publication. So far as the applicant and her son were concerned, the respondent said he honestly believed that they would be pleased with the article, especially because it was illustrated by a flattering photograph of both mother and son, and because it summarized fairly their grievances against the ISKL.

The respondent wished to express regret to the court if anything he had written was incorrect or may have given a misleading impression of the case. He said that he had not intended to do more than report a case of considerable public interest in the region.

The respondent added that his article was read for libel and contempt by a senior lawyer in Kuala Lumpur on 13 January, and then approved by a media law specialist lawyer in Hong Kong. The respondent did not, in view of their advice, imagine that the article would ever be made the subject of contempt proceedings.

The respondent said that the notice of motion gave no indication of which passages the applicant complained of or how his conduct in writing them had prejudiced or scandalized the court. He was very surprised that the applicant should want to have him put in jail as he did not bear her and her family any malice whatsoever.

The respondent took exception to the suggestion that he ought not to have written the article because of a 'conflict of interest'. The respondent denied entirely the suggestion that he was motivated to assist the ISKL, and he swore that he had no knowledge or belief in January this year, that any fact he stated or impression he gave was false. He said he had no intention to excite prejudice against the applicant/plaintiff or to exert pressure on this court.

A The respondent added that he had spoken to the editor of the Review, and that the respondent would be happy to publish a letter of reasonable length and content from the applicant/plaintiff, or alternatively to correct any factual mistake or misleading impression to which the applicant/plaintiff could point. He therefore asked the court to dismiss the B notice of motion with costs.

Submissions for the respondent

Learned counsel for the respondent contended that he could not see how the article, looked at as a whole, could scandalize the court, and he was C unable to see how the article had put pressure on the court. He, however, attributed to the respondent a mistake in para 9 of the article by stating that the father of the plaintiff had written a 12-page letter to the court 'and he would immediately advise the client to apologize and to correct the impression'. In any event, learned counsel complained that he was both D unaware and unsure of the particulars constituting the contempt. As stated above, the respondent had filed the article with the Hong Kong office and the whole article went through normal editing by the Review before it was published. The article, he added, was open to a liberal interpretation.

More specifically, the respondent's learned counsel did not think E para 3 was a problem and added that he would be able to put in a detailed affidavit by the senior Malaysian lawyer who was not identified. He further submitted that the respondent was not a person trained in the Malaysian legal system and had to depend on the senior Malaysian lawyer. He said this was a litigious society and that was to capture the readers in the Asian region. Learned counsel held the view that para 1 of the article seemed to F suggest that Malaysia was catching up with litigation. In relation to para 2, he opined that there was nothing wrong in saying that the damages sought was RM6m, apart from showing that litigation was growing. According to him, paras 12 and 13 clearly showed that there was a move from the traditional trend in that damages were sought and awarded in enormous G amounts. This, according to him, had generated extreme interest. The contents of the article therefore tallied with the theme. Learned counsel for the respondent submitted that para 5 of the article related to a hefty award which was a financial burden on the ISKL and that there was no contempt as it could not have put pressure on the court. The issue was a H public issue. Paragraph 4, according to him, provided a new legal ground and there again, in his view, did not constitute contempt. There must be latitude for the public to discuss the law. The court was not influenced.

In relation to para 6, learned counsel said he was prepared to disclose the name of the person but no such name was proffered by the respondent in his affidavit or his counsel from the Bar table. He added that I para 6 meant what it said, namely that there should have been consultation between the plaintiff and the ISKL. He submitted that the passage could not be contemptuous. Paragraph 7, in the view of learned counsel, was not a lopsided story, which was summarized in para 8. Paragraph 9, he

submitted, was actually a mistake made by the editor — but it was to be noted that the editor had affirmed no affidavit to that effect. A

It was further submitted that paras 10 and 11 gave the defendant's version in a summary. Paragraphs 12 and 13, in his view, diluted all the earlier paragraphs. The respondent's counsel was completely surprised that para 14 was a complaint as it was not unfavourable to the plaintiff. He submitted that para 14 could not be combined with para 5. In any event, paras 14 and 5 were beneficial to the plaintiff. B

Learned counsel for the respondent submitted that the article could not have and did not scandalize the court. This type of contempt, namely scandalizing the court, according to him, was non-existent and unheard of in use. The article, he suggested, referred to Dato' Gopal Sri Ram as a parent of the plaintiff and not in his capacity as a judge of the Court of Appeal. There was no scurrilous attack on him as a judge. C

He also submitted that intention was a necessary ingredient in the law of contempt of court, particularly in relation to scandalizing the court. The ingredient was not fulfilled here, as there was no intention on the part of the respondent to scandalize the court. D

Judgment of the court

Analysis of the article by reference to specific paragraphs E

For the purpose of my judgment, in order to determine whether the article or any of the paragraphs contained therein amounted to contempt of court, it was necessary to refer to each of the relevant paragraphs in the article. F

(i) Scandalizing the court, in para 3 which reads as follows:

> The case has sparked intense interest among legal circles, educators and foreign investors in the Malaysian capital. For starters, the thin, bespectacled student, Govind Sri Ram, is the son of a prominent Court of Appeal judge, Gopal Sri Ram. And many are surprised at the speed with which the case raced through Malaysia's legal labyrinth. The trial began on 6 January, less than seven months after a writ was filed with the High Court. 'Normally, in a civil case, you're lucky to get a hearing within five years,' a veteran lawyer notes. G

In my judgment, whether or not para 3 was contemptuous was to be determined by reference to the effect the words used therein had on ordinary reasonable readers and not what the respondent as the author thought or intended. Paragraph 3 above has raised two critical points, namely: H

(a) that the plaintiff's father is a prominent judge of the Court of Appeal; and I

(b) by reason of that position, he was able to influence the court.

A In my view, this paragraph was calculated to give rise to a reasonable and objective impression on an ordinary reasonable reader of average intelligence that our High Court had been manipulated or influenced by Dato' Gopal Sri Ram because he is a prominent judge of the Court of Appeal. The accusation launched by the respondent against our High Court, in particular, 'the speed with which the case raced through the Malaysian legal labyrinth' B was obviously a baseless, unwarranted and unsubstantiated untruth.

In an adversary system which is practised in the Malaysian courts, the speed at which a case is heard is very much in the hands of the parties — because the parties can at any time apply to the court for an early hearing date. To an indolent and uninitiated party, his enthusiasm in C wanting to apply for an early date may well be lackadaisical or non-existent. Our court, in such a case, is a referee who is non-partisan and who does not actively participate in the legal battle. Hence, in the absence of an application by any of the parties, the court would not of its own volition give an early hearing date. On the other hand, to an astute, alert D and dynamic litigant who is always ready, able and willing to see the early disposal of his case so as to put an end to the litigation, he would not wish to drag his feet but would most certainly move to apply to the court for an early hearing date. In the instant case, both the plaintiff and the defendants, through their respective team of hardworking and dynamic lawyers and legal advisers, had applied for an early trial of the civil suit after they had E complied with all the procedural requirements prescribed by the RHC, in particular the proceedings in summons for directions under O 25. Documents had been mutually exchanged and served. In such circumstances, the court could not delay or deny the parties an early hearing date, as justice delayed is justice denied. In any event, there was no F reason for the parties to be denied the hearing of the civil suit. When all the lawyers in the civil suit were in court to apply for the fixing of the early dates for hearing, they had consistently expressed their consent, desire and eagerness to have an early trial.

Hence, the early dates for the trial had been fixed at the behest of all parties and their respective team of lawyers. Neither the plaintiff nor the G defendants and their respective team of lawyers raised any voice of grievance, complaint or dissent. However, the respondent who was a mere observer had deemed it his duty to voice his complaint and dissent in a written form in the article wherein he had launched a systematic attack on this High Court with particular reference to 'the speed with which the case raced H through Malaysia's legal labyrinth.' He had indeed sought to show in para 3 that this High Court was not fair and as a result, had helped the plaintiff by giving an early hearing date for the civil suit because his father is a judge of the Court of Appeal. The respondent went even further by quoting an unidentified veteran lawyer who said that: 'Normally, in a civil case, you're lucky to get a hearing date within five years'. Indeed he failed to bring forth I the alleged lawyer who was supposed to have told him this. The respondent had surreptitiously portrayed a picture that the whole proceedings in the civil suit had been short-circuited in order to accommodate a judge of the

Court of Appeal, when actually that was not the case here. I am of the view that para 3 was both scandalous and contemptuous in that it sought to attack the fundamental integrity of this court. A

In *Re A-G of Canada and Alexander et al* 65 DLR (3d) 608, the Director of Public Services for the Northwest Territories was charged with impaired driving and refusing to provide a breath sample. Since one of his duties was the administration of justice in the Territories, arrangements were made through the sheriff for him to appear before Morrow J of the Supreme Court rather than a magistrate, Morrow J being the only judge in the Territories who was independent of the director. Due to the judge's schedule, it was necessary that the director appear for trial before the regular court time and before the return date on his appearance notice. On learning, after the fact, of the director's court appearance, the accused, publisher of a newspaper, published a comment under the title 'A Double Standard of Justice in the NWT' in which he referred to 'significant reasons' for this special court, to an 'apparent attempt to cover up' to shield the director, to one kind of justice for 'public figures' and to arrangements made through the Crown to short-circuit normal procedures and prevent the media from learning of the trial. The accused had made inquiries as to the reason for the unusual time of the hearing but was apparently not satisfied with the reasons he obtained. B C D

After learning of the publication, Morrow J gathered together all persons involved, including the accused, so that the accused might be satisfied as to the handling of the case. The meeting having proved unproductive, Morrow J had a 'press release' delivered to the accused stating that if the accused did not apologize he would have the Crown Attorney commence contempt proceedings. E

The accused's apparent answer was to publish two cartoons, one depicting Morrow J as sentencing the accused to 100 years in jail with a comment as to 'double standard of justice' and the other showing a person commenting to Morrow J that newspapers 'can't tell the truth without lying'. On the hearing of the application for a writ of committal for contempt of court against the accused publisher and for an order that an appropriate penalty be imposed against the accused publishing company for contempt of court, it was held that the accused be convicted. F G

Disbery J held that the essence of the offence of contempt by scandalizing the court was the tendency that the conduct may serve to lower the authority, standing and reputation of the court in the community. The accused was entitled to adversely criticize the judicial act of the judge provided such criticism was done in good faith. Even if the accused made factual errors with respect to matters occurring — apart from the court's activities — such comment would not per se amount to contempt of court. Where, however, the comment goes beyond honest criticism and imputes improper motives to the judge and other court officials, it will constitute contempt. The 'comment' when considered as a whole would leave the impression that an attempt had been made to shield a public figure from adverse publicity. It therefore constituted an allegation of partiality H I

A calculated to lower in the public eyes, the reputation and standing of the magistrate's court as being a court which treated all persons equally. Moreover, as Morrow J was the only resident judge of the Supreme Court, the allegation that he was a party to this cover-up was calculated to lower the reputation and standing of that court for impartiality and lower its B authority in the community, and was therefore contemptuous.

As well, the cartoon referring to the 'double standard of justice', when considered in all the circumstances, was malicious and calculated to lower, in the public's eyes, the authority of the court.

C (ii) Portraying and publishing a lie, in para 4 which reads as follows:

> The main point of interest for lawyers is that the case is breaking new legal ground.
>
> 'It's the first time in Malaysian history that someone is suing on the basis of unfair discrimination,' notes one. 'Malaysia has no laws on discrimination.'.

D

In my judgment, this paragraph contains a lie in that the action in the civil suit was not based on 'unfair discrimination' but on 'unlawful discrimination.' The respondent did not seem to have any due regard for the truth of what he wrote in the article. He had indeed written the article in blatant disregard for the truth. Further, the passage written by the E respondent in para 4 in which he quoted an unidentified source to the effect that Malaysia has no laws on discrimination, was indeed an unwarranted lie which had gone beyond an honest expression of opinion. Since the coming into force of the Federal Constitution on 31 August 1957 in the then Federation of Malaya and subsequently, in the Federation F of Malaysia on 16 September 1963, the law relating to equality and discrimination had been promulgated and entrenched in art 8 which is reproduced in extenso as follows:

> 8 Equality
>
> (1) All persons are equal before the law and entitled to the equal G protection of the law.
>
> (2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or H disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
>
> (3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.
>
> (4) No public authority shall discriminate against any person on the I ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.
>
> (5) This Article does not invalidate or prohibit:
> (a) any provision regulating personal law;

(b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion;
(c) any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;
(d) any provision prescribing residence in a state or part of a state as a qualification for election or appointment to any authority having jurisdiction only in that state or part, or for voting in such an election;
(e) any provision of a Constitution of a state, being or corresponding to a provision in force immediately before Merdeka Day;
(f) any provision restricting enlistment in the Malay Regiment to Malays.

The law relating to equality and discrimination as enshrined in art 8 has been very intensively and extensively litigated and examined by our courts which have taken pains to pronounce authoritative judgments and illuminations. Examples abound in the following reported cases:

(1) *PP v Khong Teng Khen & Anor* [1976] 2 MLJ 166 at p 170 where Suffian LP (as he then was) observed in the Federal Court that art 8 guaranteed to all persons equally before the law and its equal protection. The learned judge added, at p 170:

> The principle underlying art 8 is that a law must operate alike on all persons *under like circumstances*, not simply that it must operate alike on all persons in any circumstance, nor that it 'must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons ... for the purpose of legislation' (*Kedar Nath v State of West Bengal* AIR 1953 SC 404 at p 406). In my opinion, the law may classify persons into children, juveniles and adults, and provide different criteria for determining their criminal liability or the mode of trying them or punishing them if found guilty; the law may classify persons into women and men, or into wives and husbands, and provide different rights and liabilities attaching to the status of each class; the law may classify offences into different categories and provide that some offences be triable in a magistrate's court, others in a sessions court, and yet others in the High Court; the law may provide that certain offences be triable even in a military court; fiscal law may divide a town into different areas and provide that ratepayers in one area pay a higher or lower rate than those of another area, and in the case of income tax provide that millionaires pay more tax than others; and yet in my judgment in none of these cases can the law be said to violate art 8. All that art 8 guarantees is that a person in one class should be treated the same as another person in the same class, so that a juvenile must be tried like another juvenile, a ratepayer in one area should pay the same rate as paid by another ratepayer in the same area, and a millionaire the same income tax as another millionaire, and so on.

(2) *Government of Malaysia v VR Menon* [1990] 1 MLJ 278 at p 279, where Mohd Azmi SCJ in delivering the judgment of the Supreme Court held that the residential qualification imposed by the Pensions Adjustment Act 1980 constituted a permissible discrimination, and therefore did not violate the equality provision of art 8(1) and as such was not null and void under art 4 of the Federal Constitution.

(3) *Malaysian Bar & Anor v Government of Malaysia* [1987] 2 MLJ 165, where the Supreme Court in a majority judgment held that the classification in s 46A(1)(a) of the Legal Profession Act 1976 was based on reasonable as well as permissible criteria, since there was clearly a nexus between the basis of classification and the legitimate object of the Legal Profession Act 1976 as amended and as such, the classification was valid and constitutional. No fundamental rights guaranteed by art 8 of the Federal Constitution had been violated by the impugned subsection and on the basis of suspect classification, it had passed the intelligible differentia and nexus test.

(4) In *Datuk Hj Harun bin Hj Idris v PP* [1977] 2 MLJ 155, in the Federal Court, it was argued, inter alia, that s 418A of the CPC was unconstitutional as it had contravened art 8 of the Federal Constitution and was therefore null and void. Section 418A conferred on the Public Prosecutor the power to issue a certificate requiring the court before which a particular case (triable by a criminal court subordinate to the High Court) was pending, to remove it to the High Court at such place as may be specified in the certificate and to cause the accused person to appear or be produced before the said High Court. The Federal Court held that s 418A was valid.

From the above reported decisions of the Federal Court and the Supreme Court, which are indeed the highest courts of our land, it was therefore clear to me that the statement by the respondent in para 4, particularly his allegation that Malaysia had no laws on discrimination, was a baseless lie, by which the respondent had portrayed a false picture that notwithstanding the absence of the law on discrimination, this High Court still proceeded to hear the case. It is to be noted that if indeed there was no law on discrimination in Malaysia, the team of learned counsel for the defendants, namely the ISKL in the civil suit, would be the first to invoke O 18 r 19(1)(a) of the RHC to strike out the plaintiff's claim on the ground that it disclosed no reasonable cause of action. The fact that the defendants' team of learned counsel had deemed it fit to proceed with the trial obviously manifested their firm belief that the plaintiff's claim did in fact disclose a reasonable cause of action and was not a case which was conspicuously unsustainable or unmaintainable. The plaintiff's claim based on unlawful discrimination was therefore not a new legal ground as advocated by the respondent in para 4 which implied that this court simply and capriciously proceeded with the hearing of the civil suit despite the absence of the law on discrimination, therefore failing to exercise a fair and independent judgment. In the circumstances, it gave the impression that this court was seen to be unable to dispense justice with fairness and

impartiality. There could be no doubt that the paragraph written by the respondent was contemptuous. A

Further, the respondent had concealed the identities of the educational consultant from whom he allegedly received the news, the senior local lawyer and the expert in Hong Kong whose advice he had purportedly sought. The respondent had attempted to explain that his original article was different and it was the editor who had changed it. However, no affidavit was filed by the editor. On the contrary, he admitted that he was the author of the article. B

There being no evidence advanced of such views and advice, the mention of the fact that educationists and lawyers were discussing the novelty of the case without any supporting evidence in the article could only be intended to put pressure on the court and to intimidate the court by cautioning it to be careful. This was also calculated to actually stir up public opinion and get educationists and lawyers to gossip along the lines suggested by the respondent, thereby putting pressure on the court. C

D

(iii) Threat and intimidation to, and interference with proceedings in this court as contained in para 5 of the article which reads as follows:

> Educators are also following the case closely. A hefty award for the plaintiff would be a major financial burden on the school — and could hinder Malaysia's efforts to attract foreigners. The institution, after all, was established 30 years ago to educate the children of foreign businessmen and diplomats (young Govind is among the 7% of the school's 1,650 students who are Malaysian citizens, most admitted because their parents have spent years working overseas). E

In my judgment, this paragraph contains threat and intimidation to this court in that if this court were to hand down a hefty award, foreign investors would be driven away. A threat and intimidation of this nature and in this direction particularly in pending proceedings was clearly calculated to divert the course of justice and therefore interfered with the due process of law and the course of justice, in that this court should be hesitant to find in favour of the plaintiff in the civil suit by suggesting that Malaysia's economic interest was at stake. The respondent was indeed literally pressing this court so as to achieve the purpose of asking this court to throw out the plaintiff's suit so that foreign investment in Malaysia would not be jeopardized. F G

'Every writing, letter or publication, which has for its object to divert the course of justice is a contempt of the court' (per Lord Cottenham in *Re Ludlow Charities, Lechmere Charlton*'s case (1837) 2 My & Cr 316 at p 339, quoted by Nigel Lowe & Brenda Sufrin in *The Law of Contempt*, Butterworths, 1996 at p 79). H

In *Re Sin Poh Amalgamated Ltd & Ors* [1954] MLJ 152, an application was made to issue writs of attachment against six newspapers and their respective editors on the grounds that the newspapers concerned had published certain matters with regard to pending proceedings which tended I

A to prejudice the trial of 48 persons charged. Murray-Aynsley CJ of the Singapore High Court held that '... contempt of court can be committed with regard to all pending proceedings'. This continues until they are finally disposed of. Any comment of a tendentious character, that is to say, comment which judges in advance, the issues to be decided in such B proceedings, may be contempt of court. This applies to proceedings before all courts, whether of first instance or appellate.

His Lordship added at p 153 as follows:

> Propaganda in favour of one side or the other may affect public opinion and excite popular prejudice. If ultimately the result of the proceedings is not in C accordance with the prejudice so excited, the result is likely to cause the public to lose confidence in the courts.

A publication will constitute contempt even though the possibility of interference is remote or theoretical (see the judgment of the Court of Appeal in *A-G (NSW) v John Fairfax & Sons Ltd* (1980) NSWLR 362 at D p 369, para 22.

(iv) Attributing wrongfulness and culpability to the plaintiff's parents in pending proceedings, as stated in para 6 of the article which reads as follows:

E > 'This is the first knowledge I have of any international school being sued for anything,' says the administrator of another international school in Kuala Lumpur. 'Usually parents discuss problems with a teacher, and if that fails they go to the headmaster and come to some decision.'

In my judgment, this paragraph alluded to the unreasonableness of the F plaintiff's parents who should have resolved the matter with the ISKL but failed to do so. Hence, the respondent had attributed wrongfulness and culpability to the plaintiff's parents and so the plaintiff's case had no merits and consequently should have been dismissed. The respondent had given an ordinary, reasonable reader the impression that the plaintiff's G parents had not availed themselves of the opportunity to engage in discussion or meeting with the school but instead chose to proceed to litigation in court as the first priority, with the sole purpose of obtaining astronomical damages from court, thereby giving the impression of the unmitigated greed on the part of the plaintiff and his parents. By tarnishing the impeccable image, good reputation, excellent character and commendable H credibility of the plaintiff and his parents, the respondent sought to prejudice this court in the estimation and determination of the image, reputation, character and credibility of the plaintiff and his parents, hence throwing a totally bad light in the mind of the court having conduct of the trial in which the plaintiff was a party. This was certainly an adverse, baseless and I unwarranted criticism of a party having a matter pending before this court and was clearly sub judice. I therefore find this paragraph contemptuous.

(v) Serious and blatant lie in para 9 of the article which reads as follows:

> In a separate 12-page letter to the court, Govind's father says team-mates discriminated against his son because they 'never forgave Govind' for the victory that qualified him to compete in Taipei.

In my judgment, this was an absolutely serious and blatant lie perpetrated by the respondent against the plaintiff and his parents in that the respondent had categorically and baselessly stated that Govind's father, namely Dato' Gopal Sri Ram, a judge of the Court of Appeal, had written a 12-page letter to the court, when indeed there was no such letter written. The respondent's lie was a complete concoction or a figment of the respondent's imagination without any foundation or basis whatsoever. There was no doubt that this paragraph written by the respondent was calculated to give a clear and undoubted impression to an ordinary, reasonable reader that the plaintiff's father had communicated with this court by way of the 12-page letter for the purpose of bringing about an influence upon this court, so that this court would come to a decision in favour of the plaintiff, thereby constituting an interference by the plaintiff's father, who is a judge of the Court of Appeal, in the administration of justice. This false allegation by the respondent had far-reaching and adverse implications. This paragraph written by the respondent in respect of the civil suit pending before me was clearly contumacious and constituted contempt of court.

The respondent affirmed categorically in his affidavit that he had read the court documents. He had not identified what these court documents were. However, having regard to the mention of the 12-page letter, he must have had sight of the bundles of documents filed by the parties. He was therefore aware of what the facts were. He must have read the correspondence between the plaintiff's parents and the school. Yet, he gave the impression that there had been no attempt by the parents to have the matter resolved with the school but that the plaintiff came into court straightaway. This was a very serious matter because the respondent was apparently not concerned as to whether the article was true or false; his sole purpose was obviously to turn public opinion against the court and the plaintiff. This is what the respondent set out to achieve. It did not matter what the respondent said he intended. It was the impression an ordinary, reasonable reader of the article would gain by reading the article. The respondent was all out to destroy the plaintiff and his parents for bringing the action and directly to charge and impute our judiciary with bias.

If the respondent wanted a balanced view, he should have interviewed the plaintiff and his parents, but he did not do this, except to converse with Gail Vandeland, the second defendant in the civil suit.

(vi) Pressurizing this court, as stated in paras 12 and 13 which are reproduced below:

> 12 A suit like Govind's may sound rather unMalaysian, but it's not the first. Consider the libel case brought in 1994 against journalist MGG Pillai by Berjaya Group Chairman, Vincent Tan. A judge heard the case within seven months, then ruled that four articles which appeared

> in the monthly magazine Malaysian Industry in 1993 and 1994 were defamatory and calculated to disparage Tan's personal and business reputation. The upshot: Tan was granted RM2m in damages, the largest award in Malaysian history. Pillai lost his appeal, so he's headed for the Federal Court on 27 January.
>
> 13 In another case, two Malaysian companies, MBf Capital and MBf Northern Securities, filed a RM60m defamation suit on 10 January against lawyer Param Cumaraswamy over statements attributed to him by International Commercial Litigation in November 1995. The suit against Param was the 13th filed over the same article. Among the other suits it spawned, Berjaya's Tan sought RM100m in damages from legal firm Skrine & Co and its partner Tommy Thomas, and RM70m in damages from Asian Wall Street Journal reporter Raphael Pura (The journal is owned by Dow Jones & Co, owner of the Review).

In my judgment, after anxiously considering these two paragraphs, it was plain and obvious that the respondent had specially referred to these other cases for the purpose of giving an ordinary, reasonable reader the impression that our courts can be pressurized into hearing cases within seven months and the respondent had made a special parallel mention of the plaintiff's case as a case in which this court was pressurized into hearing also within seven months. There was no basis whatsoever to support the respondent's allegations in these two paragraphs. The reasons for the early hearing of the civil suit had already been given above, including the fact that the respective teams of counsel for the plaintiff and the defendants had applied for and obtained an early hearing date in the civil suit.

Further, in his affidavit, the respondent stated that if he had reported just the week's evidence in the civil suit, it would have been one-sided. I am unable to accept this explanation. In my judgment, the respondent's article was written by him to solely misinform the general public and to intimidate and pressurize the court. It was ridiculous for the respondent to say that if he had reported just the week's evidence, it would have been one-sided. By the same logic, he ought to have waited for the outcome of the entire case and then written a feature article after interviewing both parties. But he was in a desperate hurry to write the article when the matter was still sub judice. It can only be that he was aware that the plaintiff, Govind, had been denied due process and fearing that the school may lose, he wrote the article to put illegitimate pressure on the court to decide in favour of his wife's employer, namely ISKL.

(vii) Attributing ungratefulness to the plaintiff in para 14 which reads as follows:

> Meanwhile, Govind Sri Ram continues studying at the International School of Kuala Lumpur, despite his suit. He's also back on its debate team, but teacher Dean is not his adviser. Govind initiated an injunction against Dean in September, prompting the school to agree that she would not serve as coach as long as he is on the team.

To an ordinary, reasonable reader, this paragraph read in conjunction with para 5 above gives the impression that the plaintiff was an ungrateful boy

in that although he was given the opportunity to study in the school meant for foreigners, he still brought the school to court and had indeed obtained an injunction against the school. To put the record straight, this allegation by the respondent was absolutely false, as the school, which is established in Malaysia, is meant for both local and foreign students. Further, there was no injunction against the school at all. Instead, the school had only given an undertaking to the court that the first defendant, Julie Dean, would not act as a coach for the plaintiff until the final disposal of the civil suit.

Consideration of the respondent's case as stated in his affidavit:

(i) Conflict of interest in writing the article

In the respondent's affidavit in reply, the respondent stated that the events referred to in the article concluded in July 1996 itself and his wife joined the school only after that. From the record of this court, the hearing of the civil suit commenced only on 3 January 1997, by which time the respondent's wife was already employed by the ISKL. When the respondent came to court on 8 January 1997, his wife was working for the school in a senior administrative position. In my judgment, therefore, there was an obvious conflict of interest when he wrote the article.

(ii) Respondent did not address his discussion with his wife's employer

The respondent was spotted in the company of the second defendant (in the civil suit) — who at all material times was the employer of the respondent's wife — at the coffee house on 8 January, soon after the case was adjourned for the day. They were deep in discussion. The respondent had not addressed this point.

(iii) Respondent was not telling the truth when he said his wife did not discuss the case

It is my finding that the respondent was not telling the truth when he said that his wife did not discuss the case with him. The respondent had in his affidavit, affirmed that he had discussed the article with an educational consultant, a senior local lawyer and a media expert in Hong Kong. Yet he stated that he did not discuss it with his wife who was a senior employee of the school.

(iv) Wide publicity after respondent's article

The case received wide publicity only after the respondent's article appeared in the Review and not before that. The truth of the matter was that on the first day of the trial, there were no reporters present. But on the next day, when the plaintiff was to be cross-examined, a large team of reporters attended.

(v) Reading the article as a whole

The article, containing comments going into the merits of the civil suit which was pending before this court — with a tendency to prejudice the fair trial or to scandalize the court or to put pressure on the court — attracted liability based on contempt of court.

Ambit of contempt of court

(i) No constitutional or statutory definition

Contempt of court has not been defined in our Federal Constitution, Acts of Parliament or any other written law, but over the years of evolution and development in our legal system, our courts and also other courts exercising common law jurisdiction had the opportunity to establish and define the ambit of the law relating to contempt of court, hence, to provide judicial illumination and interpretation. Contempt liability is therefore primarily a common law phenomenon which will be further enriched by the process of litigation in the case of civil contempt, or the prosecution of offenders and the summary treatment of contemnors in the case of criminal contempt.

(ii) Contempt of court recognized since the 12th century

Contempt of court' or its Latin equivalent 'contemptus curiae' has been recognized in English Law since the 12th century (see Fox, *The History of the Contempt of Court* (1927)).

(iii) Difficult to give a comprehensive definition

Contempt of court is so manifold in its aspect that it would be difficult to give a comprehensive definition' (per Reed J in *A-G v Tonks* (1939) NZLR 533 at p 540).

(iv) Judicial definition

Notwithstanding the difficulty in providing a comprehensive definition, one that is generally accepted has been given by William J in *Miller v Knox* (1834) 4 Bing NC 574 at p 589 who held that:

> ... it commonly consists in a party's doing otherwise than he is enjoined to do or not doing what he is commanded or required by the process, order or decree of the court.

More recently, this term has been defined as 'an interference with the due administration of justice' (see *A-G v Hislop & Anor* [1991] 1 All ER 911).

(v) Text-book definition

Oswald in his book on *Contempt of Court* (3rd Ed, 1910) explained as follows:

> To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and the administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants, their witnesses during the litigation.

(vi) Categories of contempt are not close

The circumstances and categories of facts which may arise and which may constitute contempt of court, in a particular case, are never closed. This is the same position as in the case of negligence in which the scope for development is limitless. Contempt of court may arise from any act or form whatsoever, ranging from libel or slander emanating from any contemptuous utterance, news item, report or article, to an act of disobedience to a court order or a failure to comply with a procedural requirement established by law. Any of these acts, in varying degrees, affects the administration of justice or may impede the fair trial of sub judice matters, civil or criminal, for the time being pending in any court.

The particular matrix of the individual case is of paramount importance in determining whether a particular circumstance attracts the application of the law of contempt. Hence, a positive perception of the facts is a prerequisite in deciding whether or not there is any contravention necessitating the invocation of the law of contempt.

Article written in respect of sub judice proceedings

The respondent's article which was written in respect of sub judice proceedings in which the applicant was the plaintiff and which scandalizes this court, contains threat and intimidation and interference with the proceedings in this court, attributes wrongfulness, culpability and ungratefulness to the plaintiff, perpetrates serious and blatant lies and pressurizes this court, are acts which either individually or cumulatively were calculated to bring a court or judge of the court into disrespect or contempt, or to lower or undermine his authority and hence constituted contempt of court.

Comment on pending proceedings with a tendency to prejudice fair trial and scandalizing the judges or the courts are some of the chief forms of contempt (per Hidayatullah CJ of the Indian Supreme Court in *EM Sankaran Namboodiripad v T Narayanan Nambiar* 1970 AIR 2015 at p 2018, para 6). In respect of scandalizing the judges or the courts, the learned Chief Justice added that this occurs when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a single judge or a single court but may in certain circumstances be committed in respect of the whole of the judiciary or judicial system.

A The above dictum of the learned Chief Justice of the Supreme Court India was followed by Khanna J in *Sambhu Nath Jha v Kedar Prasad Sinha* 1972 AIR 1515 at p 1517, para 10 who held:

> The law relating to contempt of court is well settled. Any act done or writing published which is calculated to bring a court or judge into contempt
B or to lower his authority or to interfere with the due course of justice or the unlawful process of the courts is a contempt of court (see *R v Gray* [1900] 2 QB 36).

In the same judgment, at p 1518, para 11, the learned judge added:

> It is incumbent upon courts of justice to preserve their proceedings from
C being misrepresented, for prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speeches or writings misrepresenting the proceedings of the court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending
D to influence the result of a pending trial, whether civil or criminal is a grave contempt.

To constitute contempt of court, it was not necessary to prove affirmatively that there had been an actual interference with the administration of justice by reason of offending statements. It is enough if it is likely or it tends in any way to interfere with the proper administration of justice (per
E Dua CJ in *Brig ET Sen (Retd) v Edatata Narayanan & Ors* 1969 AIR Delhi 201).

Contempt of court may include conduct which, while it could not directly influence a judge's mind, was calculated to affect the conduct of parties to proceedings, and the court's jurisdiction to commit for contempt
F was not confined to cases in which its orders may directly be affected (per Maugham J of the English High Court in *Re Sir Robert Thomas & Ors* [1930] 2 Ch 368). The learned judge cited with approval the passage at p 91 of *Oswald on Contempt* (3rd Ed) which reads as follows:

> All publications which offend against the dignity of the court, or are calculated
G to prejudice the course of justice will constitute contempts. Offences of this nature are of three kinds, namely, those which: (i) scandalize the court; or (ii) abuse the parties concerned in causes there; or (iii) prejudice mankind against persons before the cause is heard; and under the second heading, he says that 'anything which tends to excite prejudice against the parties in the litigation while it is pending' is contempt; and a very large number of cases
H are cited — I agree most of them old ones — in support of that proposition.

His Lordship added at p 376 as follows:

> I think that to publish injurious misrepresentations directed against a party to the action, especially when they are holding up that party to hatred or contempt, is liable to affect the course of justice, because it may, in the case
I of a plaintiff, cause him to discontinue the action from fear of public dislike, or it may cause the defendant to come to a compromise which he otherwise would not come to, for a like reason.

(v) Intention or mens rea

Learned counsel for the respondent submitted that the common law offence of contempt requires proof of mens rea, ie an intention on the part of the alleged contemnor to impede or prejudice the administration of justice in order to constitute contempt of court. In support thereof, he relied on *Archbold* (1997) at p 2342, where the learned authors said, inter alia, as follows:

> Apart from cases to which the strict liability rule applies, the common law requires proof of an intent to impede or prejudice the administration of justice. This applies whether the case is one of publication contempt or any other conduct constituting a contempt of court (see *R v Almon* 20 St Tr 803 at p 839 — publication of matter scandalizing court).

Learned counsel for the applicant submits that in the general classification of contempt of court and in the specific case of publication contempt, there was no requirement to prove intent as a necessary ingredient.

In my considered view, I hold that in order to establish contempt of court as a result of publication scandalizing the court or interfering with the course of justice, as in the instant case, intention or mens rea on the part of the alleged contemnor was not an essential ingredient. It was no defence for the perpetrator, eg the author of an article, or for that matter, any person involved in a contemptuous or contumacious conduct, to show that he did not know that the behaviour or conduct in question constituted contempt of court. The test was whether the matter complained of had the tendency or was calculated to interfere with the due administration of justice — not whether the perpetrator intended that result. This principle resembled the principle in defamation where it was no defence for the person responsible for the publication of a libel to say that he did not know that the matter was defamatory and that he had no intention to defame.

Support for my view may be found in the well-researched writing by Borrie and Lowe, *The Law of Contempt* (3rd Ed) as updated by Nigel Lowe and Brenda Sufrin (1996) at pp 64–66, 89–94, 359–360 and 414–416 which contained an empirical study of the numerous decisions of various common law jurisdictions. In particular reference to publication contempt, the relevant passage may be found at pp 89–94 and 359–360.

As a general rule, in Malaysia, the burden is always on the prosecution to prove beyond reasonable doubt not only the actus reus of an accused person, ie that the accused had committed the wrongful act, but also his mens rea, ie his guilty mind in that the accused intended the consequences of his act or was reckless as to such consequences. It is a time honoured principle that the act and the mind must concur to constitute the crime (*actus non facit reum, nisi mens sit rea*). To this general rule, there are exceptions in which a person may be guilty of an offence although he had no guilty mind, eg in offences of an administrative character. In addition, I am of the view that contempt of court generally and publication contempt, as in the instant case in particular, is an offence of strict liability in which intention on the part of the contemnor is irrelevant, so long as he has

A published the article which has all the other ingredients alluded to above. As far back as 1742, in the case of *St James's Evening Post* (*Read & Huggonson*'s case) (1742) 2 Atk 469, Lord Hardwicke LC held that an intention to prejudice proceedings was not a necessary requirement for contempt of court consequent upon printing and publication. This dictum
B was followed by Lord Erskine LC in *Ex p Jones* (1806) 13 Ves 237 at p 239:

> An intent to commit contempt is not necessary to maintain a conviction. The writer of an article can be guilty of contempt without intending to interfere with the due course of justice. An article written with the deliberate intention of interfering with the due course of justice would be an extremely
C serious matter meriting very serious punishment. He can, however, be guilty of writing an article which tends to interfere with the course of justice without intending so to interfere. The test has always been not what the writer intended but what effect the words would have upon readers .... The question of intention is irrelevant in considering whether the offence has been committed, though, of course, it is a most important matter in
D considering the appropriate sentence to be imposed (per Harries CJ in *Superintendent And Remembrancer of Legal Affairs Bihar v Murali Manohar Prasad* (1941) 42 Cr LJ 252 at p 234).

In *R v Griffiths, ex p A-G* [1957] 2 QB 192 at p 204, Lord Goddard CJ speaking for the Judicial Committee of the Privy Council said:

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> This court lately reviewed the decisions on this subject in *R v Odhams Press Ltd* [1957] 1 QB 73 and held that lack of knowledge of the contents of the offending article was no defence, nor was lack of intention. This had been distinctly held both by Lord Hardwicke LC and Lord Erskine LC in the clearest terms in the cases we cited in our judgment and which we need not set out again, and it is to be observed that they were both dealing with
F persons who innocently printed the matter complained of in the ordinary course of their trade.

In *A-G v Times Newspaper* [1974] AC 273 at p 310, Lord Diplock said:

> ... contempt of court in relation to a civil action is not restricted to conduct which is calculated (whether intentionally or not) to prejudice the fair trial
G of that action by influencing, in favour of one party or against him, either the tribunal by which the action may be tried or witnesses who may give evidence in it; it extends also to conduct that is calculated to inhibit suitors generally from availing themselves of their constitutional right to have their legal rights and obligations ascertained and enforced in courts of law, by holding up any suitor to public obloquy for doing so or by exposing him to
H public and prejudicial discussion of the merits or the facts of his case before they have been determined by the court or the action has been otherwise disposed of in due course of law.

In *Re Odhams Press Ltd, ex p A-G* [1957] 1 QB 73 at p 80, Lord Goddard CJ held that mens rea was not a necessary constituent of a contempt of
I which the court would take cognizance and punish, and that lack of intention or knowledge was only material in relation to the penalty which the court would inflict. The test was whether the matter complained of was

calculated to interfere with the course of justice, not whether the authors and printers intended that result. This judgment was later approved by the English Court of Appeal (per Donovan LJ in *Re A-G's Application, A-G v Butterworth* [1963] 1 QB 696 at p 726).

In Australia, the similar principle applies and the ultimate question for the court's consideration is the inherent tendency of the matter published — the actual intention or purpose behind a publication is not a decisive factor (see *John Fairfax & Sons Pty Ltd v McRae* (1955) 93 CLR 351 at p 371; *Lane v Registrar of the Supreme Court of NSW (Equity Division)* (1981) 148 CLR 245 at p 258; *Victoria v Australian Building Construction Employees' & Builders' Labourers' Federation* (1982) 152 CLR 25 at pp 56 and 133; *Hinch v A-G for the State of Victoria* (1987) 164 CLR 15 at p 85).

The New Zealand Court of Appeal in *Solicitor General v Radro Avon Ltd* (1978) 1 NZLR 225 at p 232 cited with approval, Donovan LJ's approval of Lord Goddard CJ's judgment in the *Odham's Press* case.

In Canada, the same principle has been applied in *Re A-G for Manitoba and Radio OB Ltd* (1976) 70 DLR (3d) 311 at p 323.

In the light of the above authorities, it seems clear to me that it was no defence for the respondent to contend that he did not know or think or intend that the article was contemptuous or that he had some other motive for publishing. Hence, in *Littler v Thomson* (1839) 2 Beav 129, Lord Longdale MR held that the editor's contention that in his article he was advancing and promoting the cause of truth and justice would not protect him from the consequences, if his publication had been of such a nature as to disturb the free course of justice.

Also, an honest mistake in publishing the prejudicial article did not afford a valid defence (see *R v Evening Standard Co Ltd* [1954] 1 QBD 578).

(vi) Innocent dissemination

Similarly, it was held by the Privy Council in *R v Griffiths, ex p A-G* [1957] 2 QB 192 that in cases of contempt of court, the defence of innocent dissemination was not available to those who in the way of their trade were responsible for putting the offending matter into circulation — and the distributors, therefore, must be held guilty of contempt.

(vii) Trial judge not affected

The contention of learned counsel for the respondent that I, as the trial judge, could not be affected or influenced by the article and therefore the publication would not tend to affect the due administration of justice, is in my view, devoid of merits. This issue had been raised in *PP v Abdul Samad & Anor* [1953] MLJ 118 at p 123 where Briggs J referred to the judgment of Humphreys J in *R v Davies, ex p Delbert Evans* [1945] 1 KB 435 who dealt with the same point and held at p 442 as follows:

A I think it is a fallacy to say or to assume that the presiding judge is a person who cannot be affected by outside information. He is a human being, and while I do not suggest that it is likely that any judge, as the result of information which had been improperly conveyed to him, would give a decision which otherwise he would not have given, it is embarrassing to a judge that he should be informed of matters which he would much rather B not hear and which make it much more difficult for him to do his duty. To repeat the words I have already read from the judgment of Wills J in *R v Parke* [1903] 2 KB 432, 'The reason why the publication of articles like those with which we have to deal is treated as a contempt of court is because their tendency and sometimes their object is to deprive the court of the power of doing that which is the end for which it exists — namely, to C administer justice duly, impartially, and with reference solely to the facts judicially brought before it'.

(viii) Proof beyond reasonable doubt

In order to sustain a conviction for contempt of court, the standard of D proof required is that the evidence before the court must be such that the complainant, ie the applicant has proved the case against the respondent beyond a reasonable doubt (see *Tay Seng Keng v Tay Ek Seng Co Sdn Bhd* [1978] 1 MLJ 126; *Polygram Records Sdn Bhd v Phua Tai Eng* [1986] 2 MLJ 87; *Re Bramblevale Ltd* [1970] Ch 128; *Dean v Dean* [1978] 1 FLR E 517; *A-G v Newspaper Publishing plc & Ors* [1988] Ch 333; *Wee Choo Keong v MBf Holdings Bhd & Anor* [1995] 3 MLJ 549, FC).

(ix) Common law and contempt of court in Malaysia

As stated above, under art 126 of the Federal Constitution and s 13 of the F Courts of Judicature Act 1964, our superior courts are conferred powers exercisable in the case of contempt committed against such court.

Article 10(2)(a) of the Federal Constitution provides inter alia, that Parliament may impose any restriction by law relating to contempt of court. Parliament, in its wisdom, has deemed it unnecessary to impose any G restriction under art 10(2)(a).

In the absence of any restriction imposed by art 10(2)(a) of the Federal Constitution, it is eminently clear that the path is well paved for the growth and development of common law in relation to contempt of court. Our courts are expressly empowered to deal with the ambit and H parameter of what contitutes contempt of court in Malaysia.

In the case of *A-G, Malaysia v Manjeet Singh Dhillon* [1991] 1 MLJ 167, the then Supreme Court held that the English common law principle of contempt of court is applicable in Malaysia by virtue of s 3 of the Civil Law Act 1956, in that any act done or writing published which is calculated I to bring a court or a judge of the court into contempt or lower his authority is contempt of court. However, it was held that, when applying the law of contempt in Malaysia, the court will not lose sight of the local conditions and for that reason, our courts are at liberty to take a stricter view of

matters pertaining to the dignity of the court. It is a matter for our courts to consider — having regard to our own conditions and circumstances — and any view taken by foreign jurisdictions in this connection can only provide persuasive authority.

Conclusion

Having anxiously considered the affidavits of the parties herein and after launching and pursuing a detailed examination of the relevant paragraphs in the article, and in the light of the foregoing, I hold that the applicant had discharged the burden of proof and has established beyond all reasonable doubt a case of contempt of court against the respondent. In the circumstances, I find the respondent guilty of contempt, and record a conviction thereon against him.

Preliminary objection dismissed and conviction recorded.

Reported by Akbardin Hj Abdul Kader